In The United States Supreme Court

1977 term

Case No. 77-6855

Dr. Bobby Hardwick #D-2210
Petitioner - Pro-se

-V-

Mrs. Mamie Reese: Chairwoman And members of the State Board of Pardon and Parole.
Respondents

Petition For Writ of Certiorari To The United States Court of Appeals For The Fifth Circuit

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Please serve:
Dr. Bobby Hardwick #D2210
Ga. Diag. & Class. Center
P.O. Box 3877 # B-75
Jackson, Ga. 30233
Petitioner - Pro-se.

In The United States Supreme Court

_____ term : _____

Dr. Bobby HARdwick # D-2210
Petitioner PRO-se

—V—

MRS. MAMie Reese - CHAIRWO-MAN - And - members of the State Board of PARdon AND PAROLe

Respondents

CASE Number _____

Motion for Leave to File And Proceed in FORMA PAUPERis.

Petitioner. PRO-Se Bobby HARdwick. ASK LEAVE to FiLe AND PROCEED, ON the ATTACHED Petition FOR A WRit of CertiORARi IN this COURT FROM the UNITED STATES fifth CIRCUIT COURT of APPEALS. IN FORMA PAUPERis without PREPAYment of COST. The Petitioner's AffidAVit IN SUPPORT Of this Petition is ATTACHED hereto.

Respectfully Submitted
Dr. Bobby HARdwick # D-2210

In The United States Supreme Court

Dr. Bobby HARdwick # D-2210
Petitioner-PRO se

—V—

MRS. MAMie Reese # CHAIRWOM-AN - AND - members of the State Board of PARdon AND PAROLe

Respondents

CASE NO. _____

PAUPERis AffidAVit

Before me. AN AGent Commissioned to AD-MINISTER the OATH. CAme Dr. Bobby HARdwick, who After being SWORN UNDER OATH, deFose AND MAKE's the FOLLOWING STATEMENT, to wit:

1.

I AM INCARCERATED AND is without GAINFUL employment AND is therefore UNABLE to defRAY ANY COURT COST.

-2-

I AM A disABLED VETERAN AND there* A V.A. Check, IN the AMOUNT of $239.00, is

*-FORE

issued to my wife and family for the sole Purpose of taking care of my wife. Mother and daughter in that my wife is unable to fully support herself and my daughter. Therefore. I can-not use any portion of that check for court cost if I am to see that my wife and family, or myself, is provided with the "necessities of Life."

-3-

On or about march or April of 1969 I became aware of the fact that certain members of my family had misappropriated a huge sum of my mother's saving. Therefore. when I learned that she was still keeping her savings in her home She appointed me her personal financial guardian so that I could protect. As best I could, her saving. I therefore immediately, on or about nov. 2. 1973. opened, with the help of jail officials, an account in my name, but. with only monies belonging to my mother at the first federal saving + Loan Ass. in Augusta. GA.

On or About march. 6. 1975 this money was discovered. however. because I had An in forma Pauperis Action Pending I Reverted All of my mothers

money back to her custody. I further submit that I do not have any money in any institution or any place else in my name or that belong to me. I further submit that no portion of that $10.845.05 was mine it all belonged to my mother's.

-4-

I am a citizen of the United States And of the state of Georgia and I believe myself entitled to the Redress to which I seek.

-5-

This case involves the violations of my II. VI. And the due Process Clause of the 14th Amendment to the United states Constitution. Right's.

-6-

Ihad a Lawyer who only appeared before the United states fifth circuit court of Appeals, however. I did not pay him, Rather. my sister Paid him. my sister is unable to pay him to re-Present me before this honorable court. Therefore. because I cannot pay for counsel to Pefresent me before this honorable court I pray that

this HONORABLE COURT HONOR MY ATTACHED MOTION FOR Appointment of Counsel.
This 30th day of May 1978

Respectfully Submitted
Dr. Bobby HARDWICK #D-2910

SWORN to And subscribed to before me this 30th DAY of May 1978
MY COMMISSION EXPIRES My Commission Expires FEB. 24, 1980
SIGNATURE of NOTARY Public Jack K. Goff

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IN The United States Supreme Court

Dr. Bobby Hardwick # D-2810 Petitioner - Pro - se - V - Mrs. Mamie Reese # Chair - woman - And - members of the State Board of Par - don + Paroles Respondents	Case No. _____ Writ of Certiorari To The United States Fifth Circuit Court of Appeals

The Most Honorable Chief Justice - And - Associate Justices of the United States Supreme Court:

Comes Now Petitioner Pro - se Dr. Bobby Hardwick. And Respectfully Pray that A Writ of Certiorari issue to Review A Judgement And Opinion of the United States Fifth Circuit Court of Appeals, entered on May 3, 1978 Affirming the decision of the Lower Court in the Above style case.

Decisions Below

The United States District Court for the Northern Dist of GA., Atlanta Division, denied Relief on Oct. 7, 1977 [1]

On Dec. 27, 1977 Petitioner filed An Appeal in the Fifth Circuit Court of Appeals And on MAY 3, 1978 that court issued order Affirming the decision of the Lower Court. [2]

Jurisdiction of Court

Jurisdiction of this honorable court is envoked Pursuant to 28 U.S.C. 1254 [1] And Article III Section 2 [1) of the United State Constitution.

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1. See exhibit AAA Attached hereto
2. See exhibit BBB Attached hereTo

Questions Presented For Review

1

Does the conflict that presently exist between the Fifth Circuit And the holdings in the second Fourth seventh, And the District of Columbus Circuits Court of Appeals, so far As the due Process Protection that should be Afforded A Prisoner in regards to A Parole Proceeding, Reach such Proportion As to Circumvent the standards to be Applied, so far As the due Process CLAUSE is concerned, during A Parole And Probation hearings, As ordered under this court's Rulings in Morrissey-v-Brewer, 1972, 408 U.S. 471, 482, 92 S.Ct. 2593, 33 L.Ed 2d, 484 -And- GAGNON-v-SCARPELLI 411 U.S. 778 [1973]?

-2-

Is "Parole A" Conditional Liberty" Represent-ng An "interest" entitling the Prospective Parolee due Process Protection before that "cond-

itional Liberty" can be denied him?

Does Hardwick have a Right to Inspect the records on which the Respondents based their Granting or denying to him of a Parole -- And- does Hardwick have a Right to a Parole hearing where he can Rebut any Adverse evidence that may be in his Parole files And offer Additional facts to support his Release on Parole?

Constitutional Provisions And Statutes which this case involves

This case involves Amendments IV, VI. And the due Process Clause of the ~~XIV~~ 5th Amendment to the United States Constitution.

Statement of Case

On Dec. 19, 1969 Your Petitioner was illegally Arrested For the alleged crime of Bank Robbery. Because the Federal Government did not desire to illegally try Hardwick For Bank Robbery they dismissed All charges Against him. At that time the State of Georgia Picked up the case And Re-charged him with Armed Robbery [3] No one was hurt or Kidnapped during this Alleged Robbery.

On Jan. 8, 1970 Your Petitioner was tried in State Court And Convicted, illegally, Of one Count each of Armed Robbery And Agg. Assault. He was sentenced to one Life Plus one ten Year Sentence.

3- Please note that had Hardwick been charged And tried For Bank Robbery under federal Statute he would have been Sentenced, if convicted, to A maximum of no more than 20 Years Plus five Years For the Gun. which means that he would have been out of Prison by now. It's clear that the State's sole Reason For trying Hardwick was to sentence him to Life* in Prison.

*-sentence

On April 17, 1972 the United States District Court For the Southern Dist. of GA., Augusta Div. Reversed his ORIGINAL Sentence[4] with instructions that Your Petitioner be either Re-tried or Released From custody within six month.

On March 13, 1973. Some eight, not. Six As the Count ordered, months After the Abovementioned ORDER, Petitioner was tried For the second time, this time, however, he had been hastily, And illegally, Reindicted not only For the ORIGINAL indictments but he was indicted on two brand new indictments against two of the customers who was in the bank in 1969. However, this Time Hardwick was Again Convicted illegally And sentenced to two Life plus two ten Year sentences these Are the sentences he now serve.

Hardwick first became eligible for A Parole in Dec 1976 He was denied Parole at that time[5] He became eligible Again, on Dec. 1978 but Again he was denied Parole[6]

4. See Hardwick-v-Caldwell, Civil No. 2929. [S.D. GA. 1972.]
5. See exhibit CCC Attached hereto.
6. " " DDD " " .

Prior to Dec. 1976 Your Petitioner wrote several Letters to the Respondents And other officials of the State Board of Pardon And Parole board requesting that they Allow him access to the records that they would us to determine whether or not he would be granted or denied A Parole. He further requested that Respondents Grant to him A hearing but Respondents denied ALL of his Request's[7]

On or About April 12, 1977 Petitioner Filed A Civ. Rights complaint And motion For injunctive Relief in the U.S. Dist. Court For The Northern Dist. Seeking therein, not A writ of Habeas corpus but Rather, Injunctive Relief by ordering the Respondent to conform to due Process in their Parole Process. On Oct. 7, 1977, without A hearing or A show cause order, the Abovementioned District Court dismissed Hardwick's case For failure To state A claim upon which Relief can be Granted. whereupon. he filed An Appeal in the Fifth

7. For the Letter Respondents wrote Hardwick denying his Request, See exhibit 'B' of the Records That's Attached to his Brief in the 5th Circuit.

Circuit Court of Appeals. That court Affirmed The Lower court And he moved with the instant Action in this honorable Court.

Argument Amplifing Reasons For Granting Writ of Certiorari

I

The decision by the Court below demonstrate's the existence of An enormous conflict between Circuits As to the standard to be Applied, so far As the due Process Clause of the United States Constitution, in Regards to A Parole Proceeding is Concerned. As Fashioned by this honora-

ble Court in Morrissiey -v- Brewer ** And Gagnon -v- Scarpelli ***

In short the Above issue Presents the issue of what standard is to be Applied in Regards to A Prospective* Parole Proceeding once it is found that he have earned the right to Parole considerations.

This honorable court, heretofore, have dodged with ever professional Astuteness. the Resolve of the conflict in the circuits below As to what standard, so far As due Process is concerned, must be Applied to Parole consideration. To be sure see Scott -v- Kentucky Parole Board. No. 74-6438. Nov. 1976 [U.S. Supreme court -- Remanded to Court of Appeals for consideration of the Question of mootness]; Scarpa -v- United States Board of Parole 477 F.2d. 278 Vacated And Remanded for consideration of mootness. 414 U.S. 809 [1973]. dismissed As moot. 501 F.2d. 992 [CA. 5. 1973]: Johnson -v- Chairman

*- Parolee's
**- 408 U.S. 471. 92 S.Ct. 2593. 33 L.Ed. 2d. 484 [1972]
***- 411 U.S. 778

NEW YORK STATE BOARD of PARDE, 500 F.2d. 925[CA. 2]. VACATED AS MOOT. SUB. NOM: REGAN_V_JOHNSON 419 U.S. 1015 [1974]: BRADFORD_V_WEINSTEIN 519 F.2d. 728 [CA.4. 1974] VACATED AS MOOT 423 U.S 147 [1975].

EVEN THOUCH this HONORABLE COURT HAVE NOT SPECIFICALLY ATTACKED AND RESOLVED the PRESENT CONFLICT between the CIRCUIT, SO FAR AS the PAROLE PROCEEDING FOR AN INCARCERATED OFFENDER ITSELF, it HAVE HONORABLY AND PROFESSIONALLY ATTACKED AND RESOLVED the MATTER of due PROCESS in PAROLE REVOCATION PROCEEDINGS in it's RULING in MORRISSEY_V_ BREWER SUPRA AND GAGNON_V_ SCARPELLI SUPRA. HARDWICK FEEL'S, THEREFORE, THAT the FACT that both the PAROLE PROCEEDING AND the PAROLE REVOCATION PROCEEDING ARE GROUNDED in the "interest" CREATED BY the "CONDITIONAL LIBERTY" A PAROLE offers the Y ARE INSEPARABLE SO FAR AS the OPERATION of the due PROCESS CLAUSE of the 14th AMENDMENT to the U.S. CONSTITUTION. to be SURE THIS COURT HELD in MORRISSEY SUPRA that the PAROLEE, in REVOKING his PAROLE, MAY "be DEPRIVED of ONLY 'CONDITIONAL LIBERTY', NONE_THELESS, INFLICTS A 'GRIEVOUS LOSS' ON the PAR_

OLEE AND OFTEN ON OTHERS," MORRISSEY 408 U.S. AT 481. SIMPLY PUT "REVOCATION PROCEEDINGS DETERMINE'S WHETHER the PAROLEE WILL be FREE OR IN PRISON A MATTER of OBVIOUS GREAT MOMENT to him" MORRESSEY SUPRA. See. ALSO WOLFF_V_ MCDONNELL. NO. 73-679 U.S. (1974). LIKEWISE "A PAROLE PROCEEDING DETERMINE'S WHETHER the PROSPECTIVE PAROLEE WILL be FREE OR IN PRISON." BRADFORD_V_ WEINSTEIN 519 F. 2d. 728. [CA. 4, 1974]

THIS COURT FURTHER RULED in MORRISSEY SUPRA that A PAROLE WAS A "CONDITIONAL LIBERTY" SUBJECT to due PROCESS PROTECTION. INDEED SINCE this COURT HAVE ESTABLISHED that A PAROLE itself is A "CONDITIONAL LIBERTY" the "VALUABLE FEATURES of this 'CONDITIONAL LIBERTY' must be EQUIVALENT to the LOSS INVOLVED in PAROLE REVOCATION that MANDATES due PROCESS PROTECTION" CHILDS _V_ UNITED STATES BOARD of PAROLE. 1974. 167 U.S. APP. D.C. 268, 511 F.2d. 1270. 1278.

IN MORRISSEY_V_ BREWER SUPRA this COURT NOTED that "35%_45% of ALL PAROLES ARE

revoked [8] surely as long as a parolee faces such odds, he retains a continuing interest in the procedures which will be followed at future parole release hearings, therefore, this court must resolve, and not leave for another day, the constitutional issue of due process in regards to a parole proceeding. in that, this question is extremely important. It's manifest importante is demonstrated by (a) the vast number of parole release decisions that's made each year; (b) the importance of each such decision to the person affected by it; and (c) the extensive litigation, with varying results, which has developed in the federal courts. Compare the instant case, where the Fifth Circuit Court of Appeals ruled that Hardwick was not entitled to due process, with the following: United States ex. rel. Richerson -v- Wolff, 525 F.2d. 797 [CA. 7. 1975] [due process applies to the extent that writt-

8- See also Justice Stevens very eloquent dissent in Scott -v- Kentucky Parole Board et. al. supra.

an statement of reasons must be given for denial of parole) Cert. denied, 425 U.S. 914 (1976); Bradford -v- Weinstein supra. (due process applies) vacated as moot 423 U.S. 147 (1975); Childs -v- United States Board of Parole supra. (due process applies to the extent that reason must be given); Johnson -v- Chairman, New York Board of Parole (506. F. 2d. 925 (CA. 2) due process applies to the extent that reasons must be given) vacated as moot sub nom: Regan -v- Johnson, 419 U.S. 1015 (1974); Scarpa -v- United States Board of Parole 477 F.2d. 278 (CA. 5 en banc) (due process does not apply) vacated and remanded to consider mootness, 414 U.S. 809 (1973) dismissed as moot 501 F.2d 992; Menechino -v- Oswald. 430 F.2d 403 (CA. 2. 1970) (due process does not apply to parole hearings; questioned in Johnson, supra). Cert. denied 400 U.S. 1023 [1971]. See also Burton -v- Ciccone, 484 F. 2d 1322 [CA. 8. 1973] [parole board must follow its own rules but implicitly holding that due process does not apply]

As demonstrated above the 5th Circuit stands out, with the exception of one or two other circuits, alone in refusing to accord due

Process in A Parole Proceeding.

This honorable Court cannot, And sustain it's historic Role or it's constitutional duty, continue to evade the Resolving of the constitutional issue of due Process in Parole Proceeding. This Court must. therefore. Act Now to Resolve this issue so that the Present conflict, Among the circuits, may Forever be Arrested And A standard errected whereby ALL the circuits will correctly Protect Prospective Parolees constitutional Rights to due Process At Parole Proceedings.

_II_

A Parole is A Conditional Liberty Representing An "interest" the Loss, by A Prospective Parolee to enjoy, would subject the Prosp-ective Parolee to suffer A Grievous Loss. entitling the Prospective Parolee due Process At A Parole Proceedings before that valuable Liberty can be denied him.

This Court Properly held in Morrissey supra that A Parole was indeed A "Conditional Liberty" Representing An "interest." Since it's Already been decided that A Parole is A Conditional Liberty Representing An interest it must follow that the Lost, by not being Granted the Right to enjoy this "Liberty," subject's the Prospective Parolee to the same deprivation As A Parolee who's Re-sent to Prison And can No Longer enjoy this Liberty. Therefore before this Liberty is denied A Prospective Parolee. he must be Accorded due Process. "To hold otherwise would be to create A distinction too Grossly thin to stand Close Analysis" U.S. ex. Rel Johnson -v- Chairman 500 F.2d 925. 419 U.S. 1015 95. S.Ct. 488. 42. L.Ed. 2d. 289. (1974): see Also Haymes- 525 F.2d 540 (1975). It is not Fair to "Attach Greater importance to A Person's Justifiable reliance in maintaining his Conditional Freedom..... than to his mere expectation or hope of freedom," Bey-v-Conn. Board of Pardon + Parole 443 F. 2d 1076 [CA. 1971], because the Factor. As to whether Any Procedural

Protection is "due, depends on whether an individual will be condemned to suffer a 'Grievous' Loss." Joint Anti-Fascist Committee. 341 U.S. 123 71 S.Ct. 624. 95 L.Ed. 817; see also Goldberg 387 U.S. 254. 90 S.Ct. 1011. 25 L.Ed. 2d. 287. The denial of Parole "must be viewed as a Grievous Loss" Child-v-United State Board of Parole 1974. 164. U.S. App. D.C. 268. 511 F.2d 1290. 1278: see also Franklin-v-Shields 399 F. Supp. 309 [1975]

The Parole board holds the key to the Locks of the Prison Gates. It Posses the Power to Grant or deny "Conditional Liberty". In the exercise of it's broad discretion it makes Judgements concerning the Readiness of an inmate to conduct himself in a manner compatible with the well being of the community and himself. If the Parole board decision is negative the Prisoner is deprieved of "Conditional Liberty". The Results of the boards exercise of it's discretion is that an applicant either suffers a "Grievous Loss" or gains "Conditional Liberty." His interest accordingly is substantial. The Parole decision therefore must be "Guarded by minimum standards of due Process of Law and at the same time

Reflect the need of the Parole System to function consistently with it's Purpose and Responsibilities. Childs-v-United States Parole Board supra., The "touchstone of due Process is the Protection of individual against arbitrary action." Wolff-v-McDonnell. No. 73-679 [U.S. S.Ct. 1974]. There's no agency where the "Potential for Abuse, hence Arbitrary treatment." [9] have more strength than at a Parole Proceeding. Especially when the evidence for the most part, in the Parolee's file, that's to be used by the Parole Board comes from "A one sided disciplinary Proceeding." [10] Greene-v-McElroy supra. See also Landman-v-Royster 333 F Supp. 621.653 [E.D. VA. 1971].

"Present enjoyment of a Protectable interest is not a Prerequisite of due Process." Goldsmith 270 U.S. 117, 46. S.Ct. 215, 70 L.Ed. 494 [1926]"

9- Greene-v-McElroy 360 U.S. 474. 496 [1959]
10- The disciplinary Proceeding is so one sided against the Inmate until there must be a Point, before any of the Alleged evidence that's Placed in an inmate file*, where he can formally contest it. That Point must be at the Parole Proceeding.
- See also Willner 373 U.S. 96. 83. S.Ct. 1175. 10 L.Ed 2d. 224 [1963] and Schware 353 U.S. 232. 77 S.Ct 752. 1 L. Ed. 2d. 796. [1957].
*. is used

Therefore one does not have to be out on Parole, hence enjoying his "Conditional Liberty", in order for him to be Protected by the due Process clause

— III —

Hardwick have the Right to inspect any Records that's available to the Parole board on which they base their decision. As to whether to Grant or deny to him Parole. Hardwick also have the Richt to a hearing whereon he can Rebut any Adverse or erroneous information that's in his Parole file and Present evidence and/or witnesses to support his Position that he deserve's a Parole And /or the evidence in his Parole Files is incorrect or out dated.

Consideration of "what Procedures due Process may Require under any Given set of circumstances must begin with a determination of the Precise nature of the Government function involved as well as of the Private interest that has been Affected by Government Action." Id At 895 Morrissey. 408 U.S. At 471.

This Court has already decided that a Parole is "A Conditional Liberty" with an "interest" to a Parolee thereto. See Morressey supra.. This Court has also Ruled that a Revocation "Proceding determines whether A Parolee will be free or in Prison A matter of obvious Great moment to him" Morressey supra. Since it cannot be denied that A "Parole Proceeding determine's whether An inmate will be Free or in Prison" [12] it follows that, A Prospective Parolee have the same "interest" in the out come of A "Parole determination hearing As A Parolee have in A Parole Revocation hearing." U.S. ex. Rel. Johnson-v- Chairman supra. Therefore A Prospective Parolee must

12. Child-v- United States Board of Parole supra

be accorded due process as outlined in morrissey supra. see also gagnon -v- scarpelli supra.

The second circuit's recent decision in United States .ex. rel carsen-v-taylor extends application of morrissey to require" that the parolee have access to the actual documents used against him at a parole revocation hearing." The court in carsen reasoned that this was the only way to avoid "exposing a parolee to a substantial risk of recommitment upon the basis of erroneous impression or conclusions grounded on innuendo or exaggeration. As distinguished from 'verified facts" Indeed "A parole hearing will invariable turn on disputed question of facts the same as in a disciplinary hearing because in both the ultimate decision will have an impact on his ability to go free on parole." see Landman-v- Royster supra. In addition to the usual need for confrontation to reveal mistakes of identity and faulty perceptions. this is especially true in this case because Hardwick have already, by accident, caught Respondents in some errors.[13] There is a significant potential for abuse of the parole process by "persons motivated by malice, vindictiveness. intolerance, prejudice or jealousy." Greene-v- mcelroy supra. whether these be other inmates or prison guards

13- See exhibits "A" and "B" attached to Records in the 5th Circuit.

seeking revenge[14] or "in the case of a racist guard. to vindicate their otherwise absolute power over the men under their control". see also David -v- Alaska ____ U.S.___ 1974. There can "be no rational means for resolving confrontation and question of fact without providing confrontation," The most Hon. Mr. Justice marshall whom Justice Brennan joined in dissent in part in wolff-v- mc Donnell supra. The only possible way for Hardwick to be able to prepare for this "confrontation" is to be accorded access to the Respondents files which, by all indications, contains erroneous, revengeful. racist and jealousy instituted data.

The court in In Re. Doe. No. 9066 [solano County California superior ct. Dec. 11. 1973] ruled that if a prisoner was not allowed access to his Records that's used by the parole board for their determination As to whether to

14- This fact is obvious in this case because Hardwick is hated by both Prison and Parole Officials because he have filed many legal writs. As a matter of fact the Respondents admitted Recently that they are not going to or that they haven't paroled Hardwick because he files writs. See exhibits C and D Attached hereto

GRANT OR DENY A PAROLE to him "it does not APPEAR that without such disclosure it would ever be possible for Petitioner to present COUNTERING evidence AND ARGUMENT so AS to show that the fears of the [PAROLE BOARD] MAY be GROUNDLESS." SEE ALSO GAGNON_v_ SCARPELLI SUPRA. PEOPLE_v_ VICKERS 8. CAL. 3d. 451 [1977]: BOWERS_v_SMITH 353 F. SUPP. 1339 [D.Ct. 1972]: AND JOHNSON SUPRA.

IN BRADFORD_v_ WEINSTEIN SUPRA the COURT REASONED that "INMATES should be AFFORDED ACCESS to the INFORMATION UPON which the BOARD RELIES IN REACHING its decision whether to GRANT or DENY PAROLE."

IN FRANKLIN_v_ SHIELDS 399 F.SUPP. 309 [1975] that COURT REQUIRED the BOARD to FURNISH "PETITIONER [PRISONER] ACCESS to their CLASSIFICATION FILES within A REASONABLE time before their PAROLE HEARING [BECAUSE] the DENIAL of ACCESS to the PRISONER of FILES DEPRIVED him of his RIGHT to MINIMUM due PROCESS in A PAROLE HEARING." SEE ALSO COOLEY_v_ SIGLER 381 F. SUPP. 441 [D. MINN. 5TH DIV. 1974]; AND STEWART 381 F. SUPP 444 [D. MINN. 5TH DIV. 1974]

THE COURT BELOW POINTS out that this COURT, IN MORRESSEY SUPRA, HAS NOT held that due PROCESS PROTECTION extends to A PAROLE APPLICATION HEARING. The more IMPORTANT POINT, PETITIONER FEELS, should be that this COURT did not find, IN MORRESSEY SUPRA, that due PROCESS does NOT ATTACH itself to A PAROLE PROCEEDING AND that this COURT found that A PAROLE SYSTEM WAS "AN INTEGRAL PART of the PENOLOGICAL SYSTEM." It FOLLOWS that HARDWICK HAVE AN UNQUESTIONABLE RIGHT to A HEARING. To be SURE IN CHAMBERS_v_ MISSISSIPPI 410 U.S. 284. 302 [1973] the COURT AVERED that " FEW RIGHTS ARE MORE FUNDAMENTAL THAN THAT of AN ACCUSED to PRESENT WITNESSES AND EVIDENCE IN his OWN defense." [15] INDEED REGARDLESS AS to HOW ONE VIEWS A PAROLE. IN other WORD whether ONE VIEW it AS A NONE PROTECTED PRIVILEGE OR A CONDITIONAL LIBERTY, it should be FAIRLY AGREED that the PROCESS by which GOVERNMENT CHOOSES to LET A MAN GO free to REUNITE with his FAMILY AFTER YEARS of FORCED

15- SEE ALSO GOLDBERG_v_ KELLY 397 U.S. 254. 269. [1970]; MORRESSEY SUPRA; DOWS_v_ NORTON 360 F. SUPP. 1151 [D. CONN. 1973]: HARRIS_v_ PATE 440 F.2d 316 [7TH CIR. 1971].

separation, or, keep him away from that family, based on a panel such as a parole board - which bases their decision on "facts"; would have serious injury upon that individual especially if they choose to continually keep him in prison! In direct regard to this "serious injury" this court in Greene - v - mc elroy supra said "cross examination and confrontation must be permitted whenever governmental action seriously injures an individual and the reasonableness of the action depends on fact findings" [emphasis added] This court went on to say that such confrontation was "one of the 'immutable principles of our jurisprudence" [emphasis added]. See also, Arnett - v - Kennedy ___ U.S. At ___ [dissenting opinion]: Chambers - v - Mississippi supra. morrissey - v - Brewer. supra. In Re. Gault 387 U.S. 1. 56-57 [1967]. Surely then confrontation and/or cross-examination are as crucial in the parole process as in any other like proceeding.

In Perry - v - Sindermann 408 U.S. 593. 601 this court said that a "person's interest in a benefit is a 'property' interest for due pro

cess purposes is if there are "rules" or "mutually explicit understanding." that support his claim of entitlement to the benefit and that he may invoke at a hearing."

The Lower court argue's that morressey supra does not extend to a parole hearing because he "still remains in custody." This position, however is untenable, because, As the Hon. mr. Justice stevens so eloquently stated in his dissent in meachum - v - fano: No. 75-252 U.S. [1976] "Release on parole is merely 'conditional' and it does not interrupt the state's legal custody on the paroLee." Therefore in view of the fact that physical confinement, which is the prospective paroLee, in this case Hardwick. And legal custody control. As is the case with a paroLee, are both merely "species of the total spectrum of legal custody we are persuaded that morressey supra, actually portends a more basic conceptual holding: Liberty protected by due process clause may — indeed must to some extent - coexist with legal custody, hence actual confine-

16 - See exhibit 'G' Attached to Hardwick Brief To The 5th Circuit. It will show the GuideLines for A parole in GA.

17 - The mubually explicit understanding in this case is that Hardwick understands that once he satisfy the GuideLines outLined in exhibit "G" he should be granted A parole.

ment. Pursuant to conviction. The deprivation of Liberty following An Adjudication of Guilt is Partial. Not total. A Residuum of constitutional Protected Rights Remain." The Hon. Mr. Justice Stevens writing for the majority for the seventh Circuit in morressey-v-Brewer supra.

Because morressey supra is not narrowly limited by the distinction between "Physical confinement and conditional Liberty. to Live at Large in society. it requires that due Process Precede Any substantial deprivation of the Liberty of Persons in Custody. we believe A due Regard for the interest of the individual inmate, As well As the interests of that substantial Segment of our total society, Represented by inmate's. Require's that morressey be So Read." United State ex. Rel. miller-v-Twomey 479 F. 2d 701. 712, 713.

Hardwick cannot, therefore, be deprived of this Liberty or Property interest" without "due Process of Law". Haines-v-kerner 404 U.S. 519 [1972] See e.g. Graham-v-Richardson 403 U.S. 365. 374. 91 S. Ct. 1848 29L. Ed. 2d 534 [1971]: And U.S. ex. Rel. Bey-v-Conn. supra. Hardwick must be Afforded A hearing before Respondents decide to Grant or deny to him of A Parole "because

the Fundamental Requisite of due Process of Law is the opportunity to be heard." Goldberg Kelly 397 U.S. 254-269.[18]

The Fact that Hardwick is due A hearing Prior to Respondents denying or Granting him A Parole is further supported in Kent-v-West Virginia 129 U.S. 114. 123 [1889]. In Re. Buffalo 390 U.S. 544 [1968] And Grannis-v-Ordean 234 U.S. 385 [1914].

Cousins-v-Oliver. No. 73-480 R. [E.D. VA. Jan. 1974] in A similar vain said that "due Process mean that An Administrative body, Acting in An Adjudicatory Capacity And About to embark on A decision, Afford to Persons to be Affected by the impending decision, the opportunity to Present Any matter Relevant to it's determination." See Also Bell Telephone-v-Public Utilities Commn. Of Ohio 301 U.S. 292. 300. 304 [1936]: stanley-v-Illinois 405 U.S. 645 31 Ed. 2d. 551. 92. S. Ct. 1208 [1972]: sostre-v-McGinnis 442. F. 2d. 178 [CA. 2. 1971. en banc]

[18]-See Also: Joint Anti Fascist Refugee Comm.-v-McGrath 341. U.S. 123. 168: Gagnon-v-Scarpelli: supra, Bell-v-Burson 402 U.S. 535 And Sniadach-v-Family Finance Corp 395 U.S. 337

— Conclusion —

wherefore Your Petitioner PRAY that this hon. orable Court Grant Petition for Writ of Certiorari forthwith And without delay.

This 30th day of May 1978

Respectfully Submitted

Dr. Bobby Hardwick
D-2210
Petitioner Pro-se

Sworn to And subscribed to before me this 30th day of May 1978

My Commission expires

Signature of Notary Public

My Commission Expires FEB. 24, 1980

Motion For Appointment of Counsel

Comes now Your Petitioner Pro-se Dr. Bobby Hardwick And move this honorable Court to Appoint Counsel for him on this Action because he is without funds to Retain one for himself. [see Affidavit Attached to his Pauperis Affidavit Attached hereto].

— Conclusion —

wherefore Your Petitioner PRAY that this honorable Court Appoint Counsel for this Case Forthwith.

This 30th day of May 1978.

Respectfully Submitted

Dr. Bobby Hardwick # D-2210

Sworn to And subscribed to before me this 30th day of May 1978.

Signature of Notary Public

My Commission expires

My Commission Expires FEB. 24, 1980

Motion for Celerity

Dr. Bobby Hardwick, Petitioner Pro-se, Comes now and move this honorable court to move with unusual Speed in the disposition of this case, because. (1) He have already served nine years in Prison. (2) He would have been out of Prison had he not been illegally ~~been~~ tried by the State of GA and (3) The ends of Justice will not be served by Hardwick staying in Prison any long nor by this court taking a prolonged time to hear this case

He further submit that he will suffer irreplairable damage if he is made to wait for the disposition of this case.

—Conclusion—

wherefore Hardwick pray that this court move with Great Speed on this case
This 30th day of May 1978

Respectfully Submitted
Dr. Bobby Hardwick #D-2210

Sworn to And subscribed to before me this 30th day of May 1978.
My Commission expires My Commission Expires FEB. 24, 1980
Signature of Notary Public Jack K. Goff

Certificate of Service

Comes now Your Petitioner, Pro-se, Dr. Bobby Hardwick and Certify that he have submitted the Respondents with A Copy of this Action by Personally submitting the same to their Agent Lt. Jack Goff. this 30th day of May 1978

I Lt. Jack Goff varify that I have received A copy of the Above Action for Respondents by my signature At the bottom of this document. This 30th day of May 1978.

Respectfully Submitted
Dr. Bobby Hardwick #D-2210

Sworn To And subscribed to before me this 30th day of May 1978
My Commission expires My Commission Expires FEB. 24, 1980
Signature of Notary Public Jack K. Goff

— Appendix —

10/11/77

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

BOBBY HARDWICK

VS

CIVIL ACTION CASE # C 77-1032 A

MRS. MAMIE REESE, Chairwoman and
Members of the State Board of
Pardon and Parole

JUDGMENT

The Court, Honorable

United States District Judge, by order of this date, having

Granted Defendants' Motion to Dismiss for failure to state a claim.

JUDGMENT is hereby entered in favor of the

respondent(s) and against the petitioner(~~s~~).

Dated at Atlanta, Georgia, this 7th day of

OCTOBER , 1977 .

BEN H. CARTER, CLERK

Carol Hayman

BY: Carol Hayman
DEPUTY CLERK

Filed and entered in
Clerk's Office this

BEN H. CARTER, CLERK

Carol Hayman

BY: Carol Hayman
DEPUTY CLERK

Exhibit - AAA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FILED IN CLERK'S OFFICE

OCT 7 1977

BEN H. [illegible], Clerk
By: [illegible] Deputy Clerk

BOBBY HARDWICK :
:
v. : C77-1032A
:
MRS. MAMIE REESE, Chairwoman, :
and MEMBERS OF THE STATE BOARD :
OF PARDON AND PAROLE :

ORDER OF COURT

Bobby Hardwick, a state prisoner presently incarcerated in the Georgia Diagnostic and Classification Center at Jackson, Georgia, brings this action for violation of his civil rights under 42 U.S.C. § 1983. This action is presently before the Court on defendants' motion to dismiss or in the alternative for summary judgment.

The complaint alleges the denial of constitutionally protected due process by action of the defendants in denying him parole. Petitioner alleges that he was denied due process because the Board (1) did not give him a parole determination hearing; (2) considered the nature of his offense in their decision denying him parole; (3) refused to permit him to look at his file maintained by the Board; (4) refused to consider all of the relevant factors; (5) was racially prejudiced; and (6) used juvenile records.

The Court finds that even if the facts as presented by plaintiff are true, his complaint fails to state a claim upon which relief can be granted because due process rights do not attach to parole release proceedings. As the Fifth Circuit has stated in Brown v. Lundegren, 528 F.2d 1050 (5th Cir. 1976):

> In any context where it is asserted that constitutional due process is required, the basic threshold question is whether there is a 'grievous loss" of either a liberty or property interest. If there is no such loss, then the second question of whether the particular challenged procedure comports with fundamental fairness is never reached. In short, we find that the denial of parole as distinguished from the revo-
>
> and we therefore do not consider whether the procedures of the parole board deny constitutional due process.

528 F.2d 1053.

In order to show such a "grevious loss" plaintiff has the burden to show that he would have been released except for the faulty parole proceeding. The subjective expectation of parole or the belief that he would have had a "better chance" for parole are not so vested as to result in a "grievous loss" if denied by the parole board.

Accordingly, defendants' motion to dismiss for failure to state a claim is hereby GRANTED.

SO ORDERED, this 7 day of October, 1977.

Charles A. Moye, Jr.
UNITED STATES DISTRICT JUDGE

Exhibit - AAA

5/11/78 NAN

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

NO. 77-3262
Summary Calendar*

DO NOT PUBLISH

DR. BOBBY HARDWICK,

Plaintiff-Appellant,

versus

MRS. MAMIE REESE, Chairwoman,
ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the

Northern District of Georgia
(May 3, 1978)

BEFORE BROWN, Chief Judge, COLEMAN and VANCE, Circuit Judges

PER CURIAM: AFFIRMED. See Local Rule 21. 1/

*Rule 18, 5 Cir., see Isbell Enterprises, Inc. v. Citizens Casualty Co. of New York, et al., 5 Cir. 1970, 431 F.2d 409

1/ See N.L.R.B. v. Amalgamated Clothing Workers of America, 5 Cir. 1970, 430 F.2d 966

United States Court of Appeals

FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK

TEL. 504-589-6514
600 CAMP STREET
NEW ORLEANS, LA. 70130

May 3, 1978

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No.77-3262 - HARDWICK VS. REESE ET AL.

Dear Counsel:

Enclosed is a copy of the Court's Rule 21 Decision this day rendered in the above case which has been entered as the judgment required by Rule 36 of the Federal Rules of Appellate Procedure.

Rules 39, 40 and 41, F.R.A.P., govern costs, petitions for rehearing and mandates, respectively. A petition for rehearing must be filed in the Clerk's Office within 14 days from this date. Placing the petition in the mail on the 14th day will not suffice.

Local Rule 15 provides that "A motion for a stay of the issuance of a mandate in a direct criminal appeal filed under F.R.A.P. Rule 41 shall not be granted simply upon request. Unless the petition sets forth good cause for stay or clearly demonstrates that a substantial question is to be presented to the Supreme Court, the motion shall be denied and the mandate thereafter issued forthwith."

If you are court-appointed counsel, your attention is called to Local Rule 7 which provides: "Appointed counsel shall, in the event of affirmance or other decision adverse to the party represented, promptly advise him in writing of his right to seek further review by the filing of a petition for writ of certiorari with the Supreme Court, and shall file such petition, if requested by such party in writing to do so."

Very truly yours,

EDWARD W. WADSWORTH, Clerk

By Doris Call
Deputy Clerk

enc.
cc: Mr. Bobby Hardwick
Messrs. John W. Dunsmore, Jr.
John C. Walden

FIFTH CIRCUIT STATEMENT ON PETITIONS FOR REHEARING OR REHEARING EN BANC

NECESSITY FOR FILING

It is not necessary to file a petition for rehearing in the Court of Appeals as a prerequisite to the filing of a petition for certiorari in the Supreme Court of the United States.

PETITION FOR PANEL REHEARING

A petition for rehearing is intended to bring to the attention of the panel claimed errors of fact or law in the opinion. It is not to be used for reargument of the issue previously presented or to attack the court's well settled summary calendar procedures. Petitions for rehearing are reviewed by panel members only. Four copies of all petitions for rehearing shall be filed.

EXTRAORDINARY NATURE OF PETITIONS FOR REHEARING EN BANC

A petition for rehearing en banc is an extraordinary procedure which is intended to bring to the attention of the entire court a precedent-setting error of exceptional public importance or an opinion which directly conflicts with prior Supreme Court or Fifth Circuit precedent. Alleged errors in the determination of state law, or in the facts of the case (including sufficiency of the evidence), or error asserted in the misapplication of correct precedent to the facts of the case, are matters for panel rehearing but not for rehearing en banc.

THE MOST ABUSED PREROGATIVE

Petitions for rehearing en banc are the most abused prerogative of appellate advocates in the Fifth Circuit. While such petitions were filed in 15% of the cases decided by this circuit last year, less than 1% of the cases decided by the court are reheard en banc; and most of the rehearings granted resulted from a request for en banc reconsideration by a judge of the court initiated independent of any petition.

PETITION FOR REHEARING EN BANC

Twenty-five copies of every petition suggesting rehearing en banc shall be filed. The petition shall be complete in itself and shall in no case refer to or adopt by reference any matter from other briefs or motions in the case. The form and contents of the petition are set out in Local Rule 12(b).

Under Fifth Circuit Local Rule 12, counsel are required to file a written statement setting forth why, in their studied professional judgment, the case should be reheard en banc, listing either the Fifth Circuit or Supreme Court cases with which the decision conflicts or the questions of exceptional importance which would require en banc consideration. Therefore, unless these rigid standards of Federal Rule of Appellate Procedure 35 are met, the duty of counsel is fully discharged without the filing of such a petition.

RESPONSE TO PETITIONS

No response to a petition for rehearing or rehearing en banc should be filed unless requested by the court.

TIME AND FORM--EXTENSIONS

The petition (panel or en banc) must be filed within 14 days after the date of the opinion. Counsel should not request extensions of time except for the most compelling reasons. Printing delays will not be considered a sufficient reason, as clear and legible reproduced copies of typewritten petitions are authorized in the form prescribed by Rule 40(b) F.R.A.P.

RULE 12. EN BANC

(a) Procedure. A suggestion for a hearing or rehearing en banc may be made as provided in F.R.A.P. 35 and herein or by any judge of the court in active service on his own motion.

The court en banc shall consist of all circuit judges in regular active service of the circuit. A circuit judge of the circuit who has retired from regular active service shall also be competent to sit as a judge of the court en banc in the rehearing of a case or controversy if that judge sat on the panel at the original hearing thereof. See also Fed. R. App. P. 35, 28 U.S.C. §46(c), and Allen v. Johnson, 391 F.2d 527 (5th Cir. 1969). If rehearing en banc is granted, every party shall furnish to the clerk 15 additional copies of every brief the party has previously filed.

(b) Form of Suggestion. Twenty-five copies of every petition suggesting rehearing en banc shall be filed. The petition shall be complete in itself and shall in no case refer to or adopt by reference any matter from other briefs or motions in the case. It shall contain the following items, in order:

(1) The certificate of interested persons required for briefs by Local Rule 13(f)(1);

(2) Where the petitioner for rehearing en banc is represented by counsel, one or both of the following statements of counsel is applicable:

> I express a belief, based on a reasoned and studied professional judgment, that the panel decision is contrary to the following decision(s) of the United States Court of Appeals for the Fifth Circuit [or the Supreme Court of the United States], and that consideration by the full court is necessary to secure and maintain uniformity of decisions in this court: [citing specifically the case or cases]
>
> I express a belief, based on a reasoned and studied professional judgment, that this appeal involves one or more questions of exceptional importance: [set forth each question in one sentence]

_____

Attorney of record for_____

Counsel are reminded that in every case the duty of counsel is fully discharged without filing a suggestion for rehearing en banc unless the case meets the rigid standards of F.R.A.P. 35(a).

(3) Table of contents and citations;

(4) A statement of the issue or issues asserted to merit en banc consideration. It will rarely occur that these will be the same as those appropriate for panel rehearing. A petition for rehearing en banc is an extraordinary procedure which is intended to bring to the attention of the entire court a precedent-setting error of exceptional public importance or an opinion which directly conflicts with prior Supreme Court or Fifth Circuit precedent. Alleged errors in the determination of state law, or in the facts of the case (including sufficiency of the evidence), or error asserted in the misapplication of correct precedent to the facts of the case, are matters for panel rehearing but not for rehearing en banc;

(5) A statement of the course of proceedings and disposition of the case;

(6) A statement of any facts necessary to the argument of the issues;

(7) Argument and authorities. These shall concern only the issues required by paragraph (4) hereof and shall address specifically, not only their merit, but why they are contended to be worthy of en banc consideration.

State Board of Pardons and Paroles

ROOM 610
800 PEACHTREE STREET
ATLANTA, GEORGIA 30308

February 11, 1976

Mrs. Jill Elliott
Attorney at Law
Blanton & Fudge
2200 Century Parkway
Atlanta N.E.,
Georgia 30345

Dear Mrs. Elliott:

As you requested, I have reviewed Bobby Hardwick's case in order to respond to your questions regarding his status and the possibility of any consideration for release at this time.

Our records show that Mr. Hardwick was sentenced in Richmond County, Georgia on January 8, 1970 to serve life and ten years consecutive for Armed Robbery and Aggravated Assault. In 1973 he received two more life sentences for Armed Robbery and two more ten year sentences for aggravated assault, all consecutive to each other and consecutive to the previous sentences. Even with these consecutive life sentences, Mr. Hardwick must be reviewed for parole (according to Georgia law) after serving seven years in confinement.

there are errors on the record reflect this fact.

His first life sentence was computed from December 30, 1969; therefore, he is to be considered for parole during December 1976. Since he is serving a life sentence, Mr. Hardwick does not earn good time credit, and he does not have a discharge date. If he is ever released, it must be granted by this Board (or Court action).

A review of the facts surrounding Mr. Hardwick's case did not indicate that any basis for exceptional consideration exists. The Board does not alter the parole eligibility date, which is set by law, except under very unusual circumstances when the Board is convinced that a serious miscarriage of justice has occurred. There is no indication that this occurred in Mr. Hardwick's case.

Cont/d...

Cont/d...

Mrs. Jill Elliott
Attorney at Law
Blanton & Fudge
2200 Century Parkway
Atlanta, N.E.,
Georgia 30345

The Parole Board is required by law, to consider Mr. Hardwick for parole in December 1976. It is not necessary that he apply for this consideration or than anyone else apply in his behalf.

When the Board reviews Mr. Hardwick's case, all information available will be considered. His prior criminal record, the nature of his current offenses, and his record during incarceration are among the factors that will be considered.

Sincerely,

J. Robertson Haworth
Executive Officer

JRH:ehp

Cont/d...

Mrs. Jill Elliott
Attorney at Law
Blanton & Fudge
2200 Century Parkway
Atlanta, N.E.,
Georgia 30345

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When the Board reviews Mr. Hardwick's case, all information available will be considered. His prior criminal record, the nature of his current offenses, and his record during incarceration are among the factors that will be considered.

Sincerely,

J. Robertson Haworth
Executive Officer

JRH:ehp

State Board of Pardons and Paroles

Cecil C. McCall
Chairman

J. O. Partain, Jr.
Member

Mrs. Mamie B. Reese
Member

James T. Morris
Member

Floyd E. Busbee
Member

ROOM 610
800 PEACHTREE STREET
ATLANTA, GEORGIA 30308

March 11, 1976

R 3/15/76 N.A.N.

Mr. Bobby Hardwick, D-2210
H-3-44.
Georgia Diagnostic and
Classification Center
Post Office Box 3877
Jackson, Georgia 30233

Dear Mr. Hardwick:

I received your letter regarding your sentences. When I rechecked your record, I found that you are correct in that the original convictions were overturned and you were later resentenced on the same cases. Our records do show that you are serving for only two cases of aggravated assault and two cases of armed robbery as you stated in your letter.

Sincerely,

Robertson Haworth
Executive Officer

JRH:dsm

Exhibit - B

In The United States Court of Appeals For the Fifth Circuit . . .

Dr. Bobby Hardwick # D-2210 PLAintiff - Pro-se	Case number 77-3262
—V—	
Mrs. Minnie Reese - Chairman - And - members of the GA. Parole Boards. Respondents	Affidavit of Mrs. Odessie - And - Gloria Hardwick - And - Miss Lewa And - Carol Hardwick

We the, below signed, After Personally Appearing before An Agent Authorized To Administer the oath, depose, And sweak To the following. To wit.

1

That we Are citizens of the United St. Str. of America And of the state of Georgia . . . Personally of Augusta. Georgia.

-2-

That we. As members of Dr. Bobby Hardwicks immediate family, Appeared before the Respondents on Feb. 21. 1978 To Personally Appeal To Respondents To ALLow PLAintiff To be Released on Parole or That he Receive A Reduction of his sentence or That he be ALLowed To enter An Adjustment Center.

As Just CAuse For the Above Request we Produced Numerous Letters of Recommendations As well As A Petition signed by over one hundred Citizens of Augusta, whereon, they Asked For the Release of PLAintiff on Parole.

In spite of our ARRAY of evidence, To show how PLAintiff have been rehabilitated, the Respondents stated, in no uncertain terms, That the MAJor stumbLing block in PLAintiff's WAY That have caused him To miss Parole, And That will Probably cause him To continue To miss the Parole, is his continuing Filing "suits" in Courts, And, their feeLing That PLAintiff is Too SMART so FAR As KnowLedge.

II

Mr. J. V. Pinkney, who is also a member of the Pride board, went so far as to say that if the Pride Board were to release Plaintiff, and get a Job he. Plaintiff. would be telling his boss how to run the Job in a matter of weeks.

That at no time did Respondents ever assert that Plaintiff had not been rehabilitated nor that he. it released, would be a threat to soc. etc. Their overriding obsession was on Plaintiff being white. And the thought that Plaintiff was "me know it all".

This ~~to~~ day of April 1978

Respectfully Submitted
CARL HARDWICK
~~Carl Von Hardwick~~
~~Sherrill Hardwick~~
~~Odessa Hardwick~~
~~Leona Hardwick~~
~~Lynda Hardwick~~
~~Gloria Hardwick~~
FLORIA Hardwick

Sworn to and subscribed before me this ~~to~~ day of April 1978.
My Commission expires _____
Notary Public, Richmond County, North Carolina
My Commission expires Nov. 13, 1981
Notary Public Gloria Hardwick

III

OUR 152ND YEAR—NO. 37 MACON, GEORGIA, MONDAY MORNING, FEBRUARY 6, 1978

'Hell-Hole' Ruling: Prison Reform To Follow?

By SHERRY HOWARD
Telegraph Staff Writer

Bobby Hardwick dubbed the H-House a "hell hole."

Upon arriving at the disciplinary wing at the Georgia Diagnostic and Classification Center in Jackson, Hardwick came face to face with what he later described as "the most cruel and unusual extreme maximum security ever conceived by any state."

Inmates were shipped to the H-House without a hearing, Hardwick said. Some of their mail was opened. Their books and magazines were censored. They were subjected to strip searches and were kept at bay with stun guns.

H-House was cruel and unusual punishment, Hardwick wrote a federal judge in Macon. Hardwick is serving time for armed robbery.

U.S. District Judge Wilbur D. Owens Jr. subsequently agreed. More than three years after Hardwick filed a $10 million suit against the state, Owens recently issued a decision that could reach far beyond the prison system in Georgia.

"This is the first decision in the country that says this kind of behavior modification program is unconstitutional," said Thomas West, an Atlanta attorney who argued the Jackson case for the American Civil Liberties Union.

"The H House is no longer a dumping ground for people the system doesn't like," West said. The ruling sets up a "kind of due process procedure."

THAT DUE PROCESS procedure translates into a hearing to which all prisoners are entitled before they're sent to the diagnostic center, a 1,100-man maximum security prison about 40 miles north of Macon.

The Jackson prison primarily funnels inmates to other penal institutions in Georgia.

The H-House is the state's prison inside a prison. Here inmates from throughout Georgia, but mostly from the state prison in Reidsville, are sent as punishment for violating prison rules and for disciplinary reasons.

The H-House, Owens said, approached solitary confinement.

Operation of the disciplinary wing, the federal judge wrote, was in violation of the inmates' constitutional rights. He ordered the state Department of Offender Rehabilitation to correct the problems and submit a plan to federal court within 30 days.

The state department denied the inmates' charges throughout the case. The state noted in a brief filed in federal court that the "segregation unit" was used "not to rehabilitate but to take away from the general population dangerous, assaultive inmates."

A spokesman for the state's law department said the judge's order was under [illegible]. He said the state will [illegible] an appeal [illegible] within 30 [illegible].

The commissioner of [illegible] department of Corrections, Ellis Mac[illegible]ans, and prison [illegible] diagnostic center [illegible]

(See Judge, Page 5A)

Judge Lowers Boom On State 'Hell-Hole'

From Page 1A

judge's order. They directed inquiries to the state law office.

OWENS ORDERED that prisoners not be locked away in H-House without a hearing, in contradiction to a U.S. Supreme Court ruling that prison officials don't have to give a reason for transferring prisoners between prisons, West noted.

The judge ruled that "H-House just isn't another prison. The courts look at exactly what they are doing with them in H-House."

What the state was doing, Hardwick and other Jackson inmates said in suits filed in federal court, was placing them into the H-House for indefinite periods. In most cases prison guards decided if they should be released.

"You cannot put someone in prison under complete control of prison officials without doing damage to the prisoner and prison officials," said Robert Goldberg, an Atlanta attorney who assisted West.

"The damage to the prisoner is that his life is controlled by someone else. You can't give that much power to anybody."

Goldberg noted that even prison counselors testified that they were

Owens said prisoners were not told how they could be released from the disciplinary wing and some stayed there for years. Those recommended for transfer were sometimes rejected by wardens in the state who would not accept them into their prisons.

The prisoners in H-House complained about the catwalk (a square porthole covered with metal grates used by officials to watch and communicate with inmates), tight security and the use of stun guns, handcuffs and strip searches.

Officials used stun guns, aimed at inmates' heads, to induce them into performing some small task, Hardwick wrote to the judge.

OWENS ORDERED the state to close the catwalk, increase the periods of exercise for prisoners and limit the use of debilitating devices.

"Jackson was a subtle kind of cruelty," Goldberg said. "Reidsville is a lot more openly racist and a lot more brutal in a real cruel sort of way.

"We didn't show many beatings (at the Jackson center). They put people into cells and (left) them there."

Dr. Richard Korn, a penologist from New Jersey, whose testimony Owens quoted several times in his order, warned Georgia prison officials against such segregation units as the

"The H-House," he testified, "was slowly making people psychologically dehumanized and essentially destroyed."

Korn talked to at least six H-House inmates.

He also testified that he found a rare talent in Hardwick, whom Goldberg noted had "saved himself" by becoming a lawyer for the other prisoners.

Hardwick, diagnosed as delusional, schizophrenic and paranoid, spends a large part of his time in his H-House cell writing writs, Goldberg said.

A 7-foot high pile of law documents crowd the cell, West noted.

Hardwick has on occasion, asked to remain in the disciplinary wing.

"He built his world in the H-House," West observed.

OWENS ALSO ordered the state to refrain from censoring inmates' outgoing non-privileged mail just because someone personally objected to what was contained in it.

Prison officials must no longer censor books and magazines personally offensive or inflammatory to them, the judge ruled.

Visitation privileges for inmates, Owens said, must be advantageous to prisoners and not officials. The judge also ordered that law libraries be established at several Georgia prisons.

'Hell Hole' Prison Reforms May Have Widespread Effect

JACKSON (AP) — Bobby Hardwick dubbed the H-House a "hell hole."

Upon arriving at the disciplinary wing at the Georgia Diagnostic and Classification Center in Jackson, Hardwick came face to face with what he later described as "the most cruel and unusual extreme maximum security ever conceived by any state."

Inmates were shipped to the H-House without a hearing, Hardwick said. Some of their mail was opened. Their books and magazines were censored. They were subjected to strip searches and were kept at bay with stun guns.

H-House was cruel and unusual punishment, Hardwick, who is serving time for armed robbery, scribbled to a federal judge in Macon.

U.S. District Court Judge Wilbur D. Owens Jr. agreed. More than three years after Hardwick filed a $10 million suit against the state, Owens recently issued a decision that could reach far beyond the prison system in Georgia.

See PRISON, Page 4-C

...e familiar with the ... C.W. Jones ... and ... treasurer.

Prison

Continued from Page 1-C

"This is the first decision in the country that says this kind of behavior modification program is unconstitutional," said Thomas West, an Atlanta attorney who argued the case for the American Civil Liberties Union.

"The H-House is no longer a dumping ground for people the system doesn't like," West said. The ruling sets up a "kind of due process procedure."

That means all prisoners are entitled to a hearing before they're sent to the diagnostic center, a 1,100-man maximum security prison about 40 miles north of Macon.

The Jackson prison primarily funnels inmates to other penal institutions in Georgia.

The H-House is a prison inside a prison. Here inmates from throughout Georgia, but mainly from the state prison in Reidsville, are sent as punishment for violating prison rules and for disciplinary reasons.

The H-House, Owens said, approached solitary confinement.

Operation of the disciplinary wing, the federal judge wrote, was in violation of the inmates' constitutional rights.

The state denied the inmates' charges. The state noted in a brief filed in federal court that the "segregation unit" was used "not to rehabilitate but to take away from the general population dangerous, assaultive inmates."

A spokesman for the state's law department said the judge's order to submit plans for corrective action was under "advisement." He said the state will either submit a plan or have an appeal filed within 30 days.

The commissioner of the state Department of Corrections, David Evans, and prison officials at the diagnostic center would not discuss the judge's order. They directed inquiries to the state law offices.

The judge ruled that "H-House just isn't just another prison," West emphasized.

The courts, he said, look at exactly what officials do with inmates in H-House.

What the state was doing, Hardwick and other Jackson inmates said in suits filed in federal court, was placing them in the H-House for indefinite periods. In most cases prison guards decided if they should be released.

Judge Owens noted that prisoners were not told how they could be released from the disciplinary wing and some stayed there for years. Those recommended for transfer were sometimes rejected by wardens who would not accept them into their prisons.

Officials used stun guns, aimed at inmates' heads, to make them perform some small task, Hardwick wrote to the judge.

Owens ordered the state to increase the periods of exercise for prisoners and limit the use of debilitating devices.

Dr. Richard Korn, an expert penalogist from New Jersey, whose testimony Owens quoted several times in his order, warned Georgia prison officials against such segregation units as the H-House.

"The H-House," he testified, "was slowly making people psychologically debumanised and essentially destroyed."

Owens also ordered the state to refrain from censoring inmates' outgoing non-privileged mail just because someone personally objected to what was contained in it.

Prison officials must no longer censor books and magazines personally offensive or inflammatory to them, the judge ruled.

Visitation privileges for inmates, Owens said, must be advantageous to prisoners and not officials. The judge also ordered that law libraries be established at several Georgia prisons.

State Board of Pardons and Paroles

Mrs. Mamie B. Reese
Chairman

J. O. Partain, Jr.
Member

Cecil C. McCall
Member

James T. Morris
Member

Floyd E. Busbee
Member

ROOM 610
800 PEACHTREE STREET
ATLANTA, GEORGIA 30308

January 26, 1977

Mr. Bobby Hardwick D-2210
% WARDEN
Georgia Diagnostic & Classificaton Center
Jackson, Georgia

Dear Mr. Hardwick:

Recently your case was thoroughly reviewed for parole on its merit in accordance with Georgia law, and you were not among those granted parole at this time. Your case has been set for reconsideration in December of 1977. Factors which contributed in the Board's decision are your circumstance and nature of offense, previous arrest record, present attitude, ineffective use of time, and institutional disciplinary record.

Your record indicates you have made little effort to improve yourself. We realize your institution may not have all the programs to help you with your particular needs and it is recommended you consult your counselor or other correctional staff for help in planning a program for self improvement. It is our feeling you need to participate in institutional attitude change to helping yourself become a responsible person, counseing, development of personal goals which will lead to a mature life style, educational training, and job training. The Board feels such participation may accelerate your rehabilitation.

The Board realizes this decision is important to you and we regret more favorable action could not be taken. We commend your efforts in constructive use of leisure time and recreation and hope favorable action can be taken in the future.

Sincerely,

FOR THE BOARD:

M. R. Mackenzie
Administrative Assistant

MRM/bf

cc Warden
Correctional Counselor
Parole Supervisor
File

Exhibit - CCC

State Board of Pardons and Paroles

James T. Morris
Chairman

ROOM 610
800 PEACHTREE STREET
ATLANTA, GEORGIA 30308

J. O. Partain, Jr.
Member

Mobley Howell
Member

Mrs. Mamie B. Reese
Member

Floyd E. Busbee
Member

December 14, 1977

Mr. Bobby Hardwick D-2210
% WARDEN
Georgia Diagnostic & Classification Center
Jackson, Georgia

Dear Mr. Hardwick:

Recently your case was thoroughly reviewed for parole on its merit in accordance with Georgia law, and you were not among those granted parole at this time. Your case has been set for reconsideration in December of 1978. Factors which contributed in the Board's decision are your circumstance and nature of offense, pattern of criminal behavior, and institutional disciplinary record.

Your record indicates you have made little effort to improve yourself. We realize your institution may not have all the programs to help you with your particular needs and it is recommended you consult your counselor or other correctional staff for help in planning a program for self improvement. It is our feeling you need to participate in counseling, development of personal goals which will lead to a mature life style, and institutional attitude change to helping yourself become a responsible person. The Board feels such participation may accelerate your rehabilitation.

The Board realizes this decision is important to you and we regret more favorable action could not be taken. We commend your efforts in educational training and hope favorable action can be taken in the future.

Sincerely,

FOR THE BOARD:

M. G. Thompson

M. G. Thompson, Supervisor
Disposition Unit

MGT/bf

cc Warden
Correctional Counselor
Parole Supervisor
File

Exhibit - DDD

PERSONAL LEGAL COMMUNICATION

Law Offices of

688-3028
525-4859

Grace Wilkey Thomas

GEORGIA FEDERAL SAVINGS BUILDING
20 MARIETTA STREET, N.W.

GRACE WILKEY THOMAS, ATTORNEY

ATLANTA GEORGIA 30303

Feb. 21, 1978

Dr. Bobby Hardwick #D2210
Georgia Diagnostic & Classification Center
P. O. Box 3877 #B-75
Jackson, Georgia 30233

Re: Parole Board Hearing

Dear Dr. Hardwick:

You will be glad to know that we did have the hearing before the Parole Board today. Appearing in your behalf, in addition to your attorney, were your mother, your wife, daughter and sister. All of them spoke eleoquently in your behalf as did your attorney.

It was a FULL BOARD HEARING. We introduced various documents in your behalf, including a letter to the Board from Dr. Yost and a letter from your representative there at the Diagnostic Center. Your friend, Rev. S. T. Willingham was supposed to have appeared at the hearing, however, he did not make it. He called this afternoon after I had returned to my office. He said that he was going over to the Board and talk with the Board inasmuch as Tuesday is regular meeting day. One can not have a full hearing without arranging it in advance.

Dr. Hardwick, you are a well educated man, even if a lot of it is by self-education. On the other hand, many of those who have to discipline you are not as well-educated as you are and this my account for some of the lack of peace and understanding between you and some of the men (guards, etc.) who discipline you. Somehow, you manage to get a lot of disciplinary reports. Mr. Partain evinced an opinion on this that perhaps you felt a little superior to some of the men who discipline you and who are your superiors down there. You have a degree in psychology and I would suggest that now is the time to put it to good use. Regardless of whether you like any of your superiors, just make a special effort to find something good in each of them and make it a point to get along with them, nor matter how hard it is. Now is the time to evince HUMILTY and don't be a "know it all" as these men probably already resent you before you are smarter than some of them. This was discussed at the Board Hearing. Dr. Partain seemed to feel that this would be very difficult for you because you are naturally a person with a lot of ability. However, it was brought out that you were convicted of having a gun in this armed robbery and the citizens of Augusta have been trying to get legislation passed to prevent paroles altogether in such cases. Although, they agreed that you have every right to keep filing writs, they evinced displeasure with the fact that you continue to file writs. They are taking the case under advisement. Your wife told them that your same job is still available for you.

P. S. Also, take a special effort to obey ALL rules such as not having Playboy magazines in your possession, as a prisoner has very little rights, and you just have to knuckle down and be meek and mild while you are at their mercy. I certainly wish that someone would pay me for all the work I am having to do on your behalf.

Exhibit - D

Atlanta Constitution

'Hell Hole' Prison Reforms May Have Widespread Effect

JACKSON (AP) — Bobby Hardwick dubbed the H-House a "hell hole."

Upon arriving at the disciplinary wing at the Georgia Diagnostic and Classification Center in Jackson, Hardwick came face to face with what he later described as "the most cruel and unusual extreme maximum security ever conceived by any state."

Inmates were shipped to the H-House without a hearing, Hardwick said. Some of their mail was opened. Their books and magazines were censored. They were subjected to strip searches and were kept at bay with stun guns.

H-House was cruel and unusual punishment, Hardwick, who is serving time for armed robbery, scribbled to a federal judge in Macon.

U.S. District Court Judge Wilbur D. Owens Jr. agreed. More than three years after Hardwick filed a $10 million suit against the state, Owens recently issued a decision that could reach far beyond the prison system in Georgia.

See PRISON, Page 4-C

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C.W. Jones secretary and
treasurer.

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Prison

Continued from Page 1-C

"This is the first decision in the country that says this kind of behavior modification program is unconstitutional," said Thomas West, an Atlanta attorney who argued the case for the American Civil Liberties Union.

"The H-House is no longer a dumping ground for people the system doesn't like," West said. The ruling sets up a "kind of due process procedure."

That means all prisoners are entitled to a hearing before they're sent to the diagnostic center, a 1,100-man maximum security prison about 40 miles north of Macon.

The Jackson prison primarily funnels inmates to other penal institutions in Georgia.

The H-House is a prison inside a prison. Here inmates from throughout Georgia, but mainly from the state prison in Reidsville, are sent as punishment for violating prison rules and for disciplinary reasons.

The H-House, Owens said, approached solitary confinement.

Operation of the disciplinary wing, the federal judge wrote, was in violation of the inmates' constitutional rights.

The state denied the inmates' charges. The state noted in a brief filed in federal court that the "segregation unit" was used "not to rehabilitate but to take away from the general population dangerous, assaultive inmates."

A spokesman for the state's law department said the judge's order to submit plans for corrective action was under "advisement." He said the state will either submit a plan or have an appeal filed within 30 days.

The commissioner of the state Department of Corrections, David Evans, and prison officials at the diagnostic center would not discuss the judge's order. They directed inquiries to the state law offices.

The judge ruled that "H-House just isn't just another prison," West emphasized.

The courts, he said, look at exactly what officials do with inmates in H-House.

What the state was doing, Hardwick and other Jackson inmates said in suits filed in federal court, was placing them in the H-House for indefinite periods. In most cases prison guards decided if they should be released.

Judge Owens noted that prisoners were not told how they could be released from the disciplinary wing and some stayed there for years. Those recommended for transfer were sometimes rejected by wardens who would not accept them into their prisons.

Officials used stun guns, aimed at inmates' heads, to make them perform some small task, Hardwick wrote to the judge.

Owens ordered the state to increase the periods of exercise for prisoners and limit the use of debilitating devices.

Dr. Richard Korn, an expert penalogist from New Jersey, whose testimony Owens quoted several times in his order, warned Georgia prison officials against such segregation units as the H-House.

"The H-House," he testified, "was slowly making people psychologically dehumanized and essentially destroyed."

Owens also ordered the state to refrain from censoring inmates' outgoing non-privileged mail just because someone personally objected to what was contained in it.

Prison officials must no longer censor books and magazines personally offensive or inflammatory to them, the judge ruled.

Visitation privileges for inmates, Owens said, must be advantageous to prisoners and not officials. The judge also ordered that law libraries be established at several Georgia prisons.

Exhibit - D

Parole Board Basics

STATE BOARD OF PARDONS AND PAROLES

800 Peachtree Street, N.E., Room 610, Atlanta, Georgia 30308, Telephone: (404) 894-5360

Fundamentals

The State Board of Pardons and Paroles is composed of five members appointed by the Governor for seven-year terms subject to confirmation by the State Senate. Each year the Board elects one of its members to serve as chairman.

The Board was established in 1943 by an amendment to the Georgia Constitution and functions as part of the Executive Branch of State government. The Board is attached, for the purpose of receiving administrative support, to the Department of Offender Rehabilitation but performs its duties independently of that Department.

Rule-Making Authority

The Board may at any time adopt rules not inconsistent with the law.

Representation by Attorneys

Representation by an attorney is not necessary for any type of clemency consideration. Consideration for several types of clemency is automatic, and application for the other types is easy. Board procedures are not too formal or complex for the average person to understand. The decision whether to employ an attorney is a personal decision by the offender, ex-offender, or anyone acting in his behalf.

Only licensed attorneys who are active members, in good standing, of the State Bar of Georgia may appear before the Board for a fee. The Board may require any attorney representing a person before the Board to file a sworn statement as to whether he is receiving a fee.

A member of the Georgia General Assembly or other elected or appointed State official may not charge a fee for appearing before the Board regardless of whether he is an attorney.

Written Communication Preferred

The Board greatly prefers receiving written communication on a case rather than oral communication so that such communication may readily be made a permanent part of the case file.

Confidentiality of Records

All information, both oral and written, received by the Board in the performance of its duty and which is not public record elsewhere and was not obtained in a public Board hearing is classified as confidential State secret unless declassified by resolution of the Board. Confidential information includes investigative and supervisory reports and recommendations for and against clemency.

Majority Vote Decides Clemency

A decision to grant any type of clemency is by majority vote except in one instance. A unanimous vote is necessary to change a death sentence to anything other than life imprisonment.

Acceptance of Conditions in Writing

An inmate is informed of the conditions of his parole, reprieve, or other conditional clemency and must accept all conditions by signing the clemency document before the clemency will become effective.

PAROLE ELIGIBILITY SCHEDULE

FELONY Sentence Length In Years	Parole Eligibility Time
2 and less	9 mo.
2½	10 mo.
3	1 yr.
3½	1 yr. 2 mo.
4	1 yr. 4 mo.
4½	1 yr. 6 mo.
5	1 yr. 8 mo.
6	2 yr.
7	2 yr. 4 mo.
8	2 yr. 8 mo.
9	3 yr.
10	3 yr. 4 mo.
11	3 yr. 8 mo.
12	4 yr.
13	4 yr. 4 mo.
14	4 yr. 8 mo.
15	5 yr.
20	6 yr. 8 mo.
21 or more	7 yr.
Life	7 yr.

MISDEMEANOR Sentence Length In Months	Parole Eligibility Time
18 and less	6 mo.
19	6 mo. 10 da.
20	6 mo. 20 da.
21	7 mo.
22	7 mo. 10 da.
23	7 mo. 20 da.
24	8 mo.
30	10 mo.
36	12 mo.
42	14 mo.
48	16 mo.
54	18 mo.
60	20 mo.

The Board is required by Georgia law to consider inmates for parole according to this eligibility schedule. Eligibility and consideration do not imply that parole will or will not be granted.

Withdrawal of Grant of Clemency

The Board reserves the right to withdraw the grant of any form of clemency prior to the effective date if, in its discretion, it believes withdrawal to be justified.

Probation Is Not Parole

Probation is not an act of the State Board of Pardons and Paroles. Probation is an act of a court. Probation is not parole. Parole may be granted by the Parole Board after a person has served part of his sentence in prison. Probation instead of imprisonment may be ordered by a court for all or part of a person's sentence.

Both a probationer and a parolee are under supervision and must obey certain conditions, which, if violated, may lead to revocation. The Parole Board may revoke parole. The sentencing court which ordered a person placed on probation is the only agency which may revoke that probation.

Questions about a person's probated sentence should be directed to the sentencing court.

Good Time

The State Board of Pardons and Paroles does not administer the system of crediting good time to an inmate's sentence for good behavior in prison. Only the Department of Offender Rehabilitation may credit, remove, and restore good time earned in prison.

A person released on parole may continue to earn good time for good behavior at the same rate possible to a prison inmate. The Parole Board is authorized to withhold or revoke in whole or in part any such good time allowances.

Parole

Parole is the discretionary release of an offender from confinement, after he has served part of his sentence, under continuing State custody and supervision and under conditions which, if violated, permit his reimprisonment. In Georgia, State and county inmates may be granted parole only by the State Board of Pardons and Paroles.

Parole Consideration

An inmate serving a State felony or State misdemeanor sentence in the custody of the Department of Offender Rehabilitation is automatically considered for parole when he meets time-served requirements. No application is necessary.

An inmate serving a county misdemeanor sentence is considered for parole when he meets time-served requirements if he has requested consideration.

The Board will consider an inmate for parole regardless of appeals or other legal action by the inmate or his representative if the inmate meets time-served requirements. If the offender, since receiving his current sentence, has not at any time entered custody of the Department of Offender Rehabilitation, he must request parole consideration.

A request for parole consideration may be in any written form and must contain name under which the inmate was convicted, place where serving, offense(s), date(s) and county of conviction, and length(s) of sentence(s). The request should be submitted at least four months before the inmate meet time-served requirements to allow enough time for necessary investigations.

The Board generally does not consider paroling an offender serving a Georgia sentence in custody at an out-of-State or Federal prison or at a mental hospital when favorable action of the Board would not result in the offender's release from confinement.

Exhibit - E

S.C. 10 PAGE 41

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

NO. 77-6855

BOBBY HARDWICK,

Petitioner,

v.

MAMIE REESE, CHAIRWOMAN, AND MEMBERS OF THE STATE BOARD OF PARDONS AND PAROLES,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

Respectfully submitted,

ARTHUR K. BOLTON
Attorney General

ROBERT S. STUBBS, II
Executive Assistant
Attorney General

DON A. LANGHAM
First Assistant
Attorney General

JOHN C. WALDEN
Senior Assistant
Attorney General

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BRIEF FOR THE RESPONDENTS IN OPPOSITION

QUESTION PRESENTED

Do Due Process rights attach to a parole consideration proceeding which does not involve either a loss of liberty or a property right if parole is subsequently denied?

STATEMENT OF THE CASE

Bobby Hardwick was tried and found guilty by a jury in the Superior Court of Richmond County, Georgia, on an indictment charging him with armed robbery and aggravated assault. Hardwick received two concurrent life sentences and two ten-year sentences which run consecutively to the life sentences. These offenses arose from a 1969 robbery of the Citizens and Southern Bank in August, Georgia. See Hardwick v. Doolittle, 558 F.2d 292 (5th Cir. 1977). Petitioner Hardwick first became eligible for a parole consideration in December of 1976. [1/] Petitioner Hardwick was denied a parole at that time. Following the denial of his first consideration for parole, Petitioner Hardwick filed a complaint pursuant to 42 U.S.C. § 1983 against Mrs. Mamie Reese, Chairwoman of the Georgia Board of Pardons and Paroles and the other members of the Board of Pardons and Paroles, alleging a denial of his civil and constitutional rights concerning the parole mechanism in Georgia. Respondents in answering this complaint filed a Motion to Dismiss or in the alternative Motion for Summary Judgment with the district court urging the court to dismiss the complaint on the basis that due process rights as argued by the Petitioner do not attach themselves to parole consideration proceedings. The district court on October 7, 1977 agreed with the Respondents' position and dismissed the complaint for failure to state a claim. Thereafter, an appeal was taken to the United States Court of Appeals for the Fifth Circuit. In an unpublished per curiam opinion, the Fifth Circuit Court of Appeals affirmed the decision of the district court on May 3, 1978.

1/ Georgia Code Ann. § 77-525 provides that inmates serving sentences of twenty-one years or more shall become eligible for parole consideration upon completion of the service of seven years.

On June 5, 1978 a petition for a writ of certiorari was filed with this Court by Hardwick in order to review the decision of the United States Court of Appeals for the Fifth Circuit (No. 77-3262, which affirmed the decision of the district court). Respondent was directed to respond on August 17, 1978.

REASON FOR NOT GRANTING WRIT

DUE PROCESS RIGHTS DO NOT ATTACH THEMSELVES TO PAROLE ELIGIBILITY CONSIDERATIONS.

In his petition for a writ of certiorari to this Court, Bobby Hardwick seeks a review of the decision of the United States Court of Appeals for the Fifth Circuit affirming a district court decision that due process rights do not pertain to parole eligibility proceedings. Specifically, Hardwick's complaint brought pursuant to 42 U.S.C. § 1983 is a broadly based attack on the parole mechanism in Georgia. The Petitioner contends that at the time he was eligible for parole he was denied due process when the Parole Board considered the nature of the offense which led to his incarceration; did not give him a hearing before the Board; refused to permit him to examine his parole file; that the actions of the Parole Board are racially discriminatory; and, that the Parole Board in denying him a parole failed to take into consideration all factors, such as the various correspondence courses which he had enrolled in and completed since the time of his initial incarceration. Thus, the complaint which was first filed with the district court and subsequently reviewed by the Court of Appeals does not challenge Hardwick's conditions of confinement, but rather the duration of his confinement on the basis that if the Georgia State Board of Pardons and Paroles had done what Hardwick considered they should have done, he would have been released by having been granted a parole. 2/

2/ In granting the Respondents' Motion to Dismiss the district court decided in favor of the Respondents in terms of its lack of merit, that is the failure of the complaint to state a claim. However, it is apparent that the district court could have dismissed the complaint on the basis of this Court's holding in Preiser v. Rodriguez, 411 U.S. 475 (1973), for the failure of the petitioner to exhaust state remedies since he was seeking an early release which is in the nature of habeas corpus.

In his application for a petition for a writ of certiorari Hardwick is asking this Court to determine whether due process rights attach to parole consideration determinations. It is Petitioner Hardwick's belief that certain due process rights do attach for an individual who is being considered for parole release. However, the weight of authority is against Petitioner Hardwick, in that the various district courts and Circuit Courts of Appeals have consistently held that due process rights are not involved in parole eligibility considerations. Franklin v. Shields, 569 F.2d 784 (4th Cir. 1977) [reversing 399 F.Supp. 309 and 401 F.Supp. 1371]: Cruz v. Skelton, 543 F.2d 86, 88-91 (5th Cir. 1976); Brown v. Lundgren, 528 F.2d 1050, 1053 (5th Cir. 1976). These decisions and numerous other holdings that procedural due process rights are not applicable to parole consideration proceedings take into account two concepts: (1) the right of a state prisoner to a parole is not one of the rights protected by the federal consititution, that is, parole is a matter of legislative grace and not constitutional right, Dunn v. California Department of Corrections, 401 F.2d 340 (9th Cir. 1968); Bricker v. Michigan Parole Board, 405 F.Supp. 1340, 1343 (E.D. Mich. 1975); and (2) that in a parole consideration proceeding there is not "liberty" at stake to be protected by due process. See Bradford v. Weinstein, 519 F.2d 728, 732 (4th Cir. 1974). Consequently, judicial review of the denial of a parole is not available absent flagrant violations, unless the actions of the Parole Board in denying a parole are arbitrary and capricious. See Johnson v. Wells, 566 F.2d 1016 (5th Cir. 1978); United States v. Norton, 539 F.2d 1082 (5th Cir. 1976), cert. den., ____ U.S. ____, 97 S.Ct. 1129 (1976). In a parole release proceeding or a parole consideration proceeding one is talking about the privilege of being released from incarceration. Due process considerations or

safeguards attach to proceedings which could lead to incarceration of one presently free, but not to parole consideration proceedings. There is no loss of liberty in the denial of a parole because one is not constitutionally entitled to a parole, and the denial of a parole does not involve any "grievous loss of liberty." See Brown v. Lundgren, 528 F.2d 1050, 1053 (5th Cir. 1976).

Due process is a flexible concept, and is not a fixed panoply of rights.

> "[C]onsideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the governmental function involved as well as of the private interest that has been affected by governmental actions." Cafeteria Workers v. McElroy, 367 U.S. 886, 895 (1961).

Due process basically involves a balancing to arrive at what is substantially fair and just. See Wolff v. McDonnell, 418 U.S. 539 (1974). However, due process considerations only concern themselves with the deprivation of those interests which are encircled by the Fourteenth Amendment's protection.

> "The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property. When protected interests are implicated, the right to show some kind of prior hearing is paramount. But, the range of interest protected by procedural due process is not infinite." Board of Regents v. Roth, 408 U.S. 564, 569-570 (1970).

Accordingly, the question to be answered is whether parole eligibility is a "liberty" to be protected by due process. Petitioner Hardwick in support of his position relies upon Morrisey v. Brewer, 408 U.S. 471 (1972), Gagnon v. Scarpelli, 411 U.S. 778 (1973) and Wolff v. McDonnell, supra. Each of these cases are readily distinguishable from the matter presented in this application for a writ of certiorari. Morrisey v. Brewer, supra, dealt with a parole revocation hearing which directly involved a loss of liberty. Likewise, in Gagnon v. Scarpelli, the loss of liberty to be protected was the revocation of a period of probation. In Wolff v. McDonnell, supra., the liberty to be protected was not as obvious as in Morrisey and Gagnon, since in Wolff, this court was concerned with examining disciplinary proceedings within a prison, which would result in the loss of the limited liberty a prisoner has when he is incarcerated by being placed under more onerous conditions of confinement as the result of a disciplinary hearing. Sub judice, there is no loss of liberty to be protected at a parole consideration proceeding. The denial of a parole does not make the conditions of confinement any more onerous, nor does the denial of a parole take away a liberty which had previously been afforded to the inmate. To put it another way, a parole eligibility hearing is not an adversary matter; its purpose is not to determine whether a prisoner has committed a crime, but to determine whether the prisoner should be released from custody. McArthur v. United States Board of Paroles, 434 F.Supp. 163 (D.C. Ind. 1976). See also Menechino v. Oswald, 430 F.2d 403 (2nd Cir. 1970), cert. den., 400 U.S. 1023 (1971).

Consequently, a prospective parolee is not entitled to access and review of all of the information contained in his

file with the Parole Board. Franklin v. Shields, supra; Kraft v. Texas Board of Pardons and Paroles, 550 F.2d 1054 (5th Cir. 1977). Also without merit is the Petitioner's claim that the Parole Board is not entitled to deny parole on the basis of its considering the nature of the offense, or the individual's previous criminal record. Johnson v. Wells, supra; Thompkins v. United States Board of Paroles, 427 F.2d 222 (5th Cir. 1970). Similarily, an inmate is not constitutionally entitled to a hearing before the Parole Board, Willey v. United States Board of Paroles, 380 F.Supp. 1194 (D.C. Pa. 1974), nor is he entitled to have counsel speak on his behalf. Cook v. Whiteside, 505 F.2d 32 (5th Cir. 1974). Lastly, the district court was correct in dismissing Hardwick's complaint which contained an allegation that parole considerations in Georgia were racially motivated. The denial of a parole will not be reversed on the basis of an inmate's conclusory allegation such as his contention that racial considerations motivate parole release. See Sherman v. Yakahi, 549 F.2d 1287, 1290-91 (9th Cir. 1977); Forrester v. California Adult Authority, 510 F.2d 58, 61-62 (8th Cir. 1975); Ellingburg v. King, 490 F.2d 1270, 1271 (8th Cir. 1974).

CONCLUSION

This Court should refuse to grant a writ of certiorari because no sufficient reasons for review have been set forth by Petitioner Hardwick.

Respectfully submitted,

ARTHUR K. BOLTON
Attorney General

ROBERT S. STUBBS, II
Executive Assistant
Attorney General

DON A. LANGHAM
First Assistant Attorney General

JOHN C. WALDEN
Senior Assistant Attorney General

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Please serve:

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132 State Judicial Bldg.
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Atlanta, Georgia 30334
(404) 656-3358

CERTIFICATE OF SERVICE

I, G. Stephen Parker, Attorney of Record for the Respondents herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that in accordance with the Rules of the Supreme Court of the United States, I have this day served a true and correct copy of the foregoing Brief for Respondents in Opposition upon the Petitioner by depositing a copy of same in the United States mail, with proper address and adequate postage thereon to Bobby Hardwick, Georgia Diagnostic and Classification Center, P. O. Box 3877, Jackson, Georgia, 30233.

This 1ST day of September, 1978.

G. Stephen Parker

G. STEPHEN PARKER

SUPREME COURT OF THE UNITED STATES

NO. 77-6855

BOBBY HARDWICK,

Petitioner,

v.

MAMIE REESE, CHAIRWOMAN, AND MEMBERS OF THE STATE BOARD OF PARDONS AND PAROLES,

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STATE OF GEORGIA
DEPARTMENT OF LAW
ARTHUR K. BOLTON, ATTORNEY GENERAL